EXHIBIT 2

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	*	Docket 00-CV-558-R
	*	
THE BABCOCK & WILCOX COMPANY	*	January 25, 2002
	*	10:00 a.m.

* * * * * * * * * * * * * * * * * *

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Debtors:	Kirkland & Ellis BY: DAVID M. BERNICK, ESQ. 200 E. Randolph Drive Chicago, Illinois 60601
For the Asbestos Claimants Committee:	Caplin & Drysdale BY: ELIHU INSELBUCH, ESQ. 399 Park Avenue, 27th Floor New York, New York 10022
Official Court Reporter:	Toni Doyle Tusa, CCR 501 Magazine Street, Room 406 New Orleans, Louisiana 70130 (504) 589-7778

Proceedings recorded by mechanical stenography, transcript produced by computer.

APPEARANCES, (Continued):

For the Unofficial Committee of Select Claimants:	ELIZABETH W. MAGNER, ESQ. 228 St. Charles Avenue Suite 1110 New Orleans, Louisiana 70130
For the Futures Representative:	Young, Conaway, Stargatt & Taylor BY: JAMES L. PATTON, JR., ESQ. 1000 West Street, 17th Floor Wilmington, Delaware 19801
For the Futures Representative:	Session, Fishman & Nathan BY: J. DAVID FORSYTH, ESQ. 201 St. Charles Avenue, 35th Floor New Orleans, Louisiana 70170

I N D E X

rules do not change in Chapter 11. The next question, is it simply an --

THE COURT: Let me get to what's on my mind about this. I've read all of your materials and a number of questions leap out at me. You have 221,000 proofs of claim.

MR. BERNICK: That's correct.

THE COURT: How much are the company's assets and insurance?

MR. BERNICK: The face value of the insurance is $1.3 billion. That requires also a plugging of insolvency holes of about $150 million, which would have to be supplied by the company. Beyond the insurance, the company's net assets as of the time of the insolvency hearing -- I would have to find out for Your Honor.

THE COURT: Can you give me sort of a ballpark?

MR. BERNICK: Oh, I don't know -- somebody want to help me out? $500 million or $600 million.

THE COURT: How much debt do you have that's nonasbestos-related?

MR. BERNICK: I believe the number we gave you is the net assets number.

THE COURT: That was net?

MR. BERNICK: Yes.

THE COURT: Now, the process that you're talking about, essentially of these 221,000 claims you contend that

only about 22,000 of them are arguably viable?

MR. BERNICK: 22,000, I take it Your Honor has gone through and kind of marked out categories that we put numbers on and done the subtraction?

THE COURT: Right.

MR. BERNICK: I'm not sure that's correct because there's overlap between some of those categories.

THE COURT: Well, what I looked at was you had these categories that you say are claims that are nonviable. There were like 22,000 left that are arguably viable, to which you say you have other defenses as to the 22,000.

MR. BERNICK: I don't know what exactly the math was that Your Honor followed. As I indicated, some of these categories that we put numbers on are overlapping, so you would have to see how they net out.

THE COURT: I think I was following what you put in your surreply brief because the original brief that you submitted didn't do that. Your supplemental brief basically listed that there were: 50,000 claims that were challengeable on the basis of duplication, that were paid already, they were employees, or they lacked some sort of documentation; another 160,000 had no exposure; 40,000 that had arguable exposure, had no impairment; and that there were 22,000 left after.

MR. BERNICK: That's fair enough.

THE COURT: If what you are saying is true, that

still would mean that before we got to the 22,000 that are arguably viable I would have to make 200,000 discrete determinations that these claims were not sufficient to proceed, is that right?

MR. BERNICK: You would have to make a determination with regard to those claims. The word "discrete" suggests it would be individualized.

THE COURT: How else?

MR. BERNICK: That's the whole purpose of Rule 42. It enables the Court to aggregate claims for purposes of addressing a common issue.

THE COURT: But the issues are still individual issues. If you are going to lump them all together and say, okay, these 160,000 may have an issue involving exposure -- each one of those people has an issue as to exposure that has to be determined. Simply putting them together for Rule 42 doesn't make the individual issue go away.

MR. BERNICK: It depends upon the nature of the issue and the nature of the proof. Obviously, in order to make a determination binding with regard to an individual claimant, that claimant's particular claim has to be before the Court. But in the same fashion, if you were to say we had 100,000 people all of whom got a certain disease from exposure to a pharmaceutical drug --

THE COURT: That doesn't have anything to do with

this. You are saying that you have 160,000 people who weren't exposed to your boilers.

MR. BERNICK: Right.

THE COURT: Now, how can I do that except one at a time?

MR. BERNICK: Because you take the proof of claim forms, and where they say by their own proof of claim forms they were exposed to Babcock & Wilcox asbestos, it's right in their claim forms. You compare what their claim forms say was the site of that exposure to the Babcock & Wilcox boiler sites which are documented and recorded. A boiler is not something that floats in and out. They are huge facilities. You see if there's an overlap between those 95,000 --

THE COURT: That's not the end of the story. We don't know the validity of your data. There has to be a determination. The fact they say, "I was exposed to a boiler at X, Y, Z location," and you say, "No, you weren't," is not the end of the story.

MR. BERNICK: I could see there might be a necessity of some discovery to verify the accuracy of our documentation, and that verification I believe would be fairly straightforward. We would establish it was a business practice to create files for each and every boiler that was manufactured and supplied, that they had been kept in the ordinary course of business, they had been maintained and what work done on those

boilers recorded, these are the boiler files, and they are what they are.

Now, if somebody is going to say, "No, it turns out that you really had another boiler that you didn't even know about that's not in your files, not in your records, nobody ever heard about it, but I swear it was a Babcock & Wilcox boiler," then you could argue there's an issue of fact. The question is whether it's a credible issue of fact given what the proofs would be.

THE COURT: Well, we would have to get into 160,000 of those possibilities.

MR. BERNICK: There's that possibility, or the Court could determine based upon the evidence that's been provided about how these boilers were set up, how they were certified, how they were tracked, and how they were logged. That oral testimony saying, "I saw what I thought to be a Babcock & Wilcox boiler," does not present a reasonable issue of fact. It is not an issue of fact in which reasonable minds could differ and shouldn't go to the jury.

THE COURT: We still would have to get to that as to each one.

MR. BERNICK: I would disagree with that, Your Honor. You get to that on the basis of the nature of the proof that's offered by the company about what the documentation means. So, in other words, we say if the documentation is solid, reliable

documentation that's been properly kept, had to be kept, and that all that's on the other side, therefore, is somebody who says, "I was there and I saw a different thing," you don't have to make that determination 160,000 times. The question is whether the oral testimony in some fashion has enough credibility as against the documented history of record-keeping to create a reasonable issue of fact. It's the whole question of the summary judgment standard of proof. It's not just a disagreement between two people saying something.

THE COURT: It's your contention there are 160,000 people who have said they were exposed to your boilers who were not at any place where there was --

MR. BERNICK: There are 93,000 people who already in their claim forms say, "I was exposed to Babcock & Wilcox asbestos," and they fill in the blank with the site where there was never a Babcock & Wilcox boiler. There are 95,000 of those people. There are an additional 65,000 where we think that's what they have done, but we are not quite sure, so we create a 45-day window, or thereabouts, for them to clarify what was the particular site where they say a boiler existed. These can be done on an aggregated basis.

It's really a question of whether summary judgment means anything. If all that it takes to defeat summary judgment is somebody to say, "I disagree. I saw it," then we won't have summary judgment, but that's not the

standard. The standard is it has to be sufficient evidence to clear a directed verdict motion. It must be evidence sufficient to give rise to a reasonable difference of view about what the facts were.

THE COURT: All right. Let me ask you something else. Even if you lose on these 200,000, before we get to the 22,000 there are additional grounds you can challenge any one of those people in the first 200,000. There are multiple grounds that you could keep coming back. If you lost, say, on the boiler issue, you would come back later on a sophisticated user or some other motion later, right?

MR. BERNICK: Right. Well, in the case of the boiler issue, if the boiler wasn't there, it's going to be difficult for us --

THE COURT: Suppose there's an issue of fact and you lose that summary judgment motion. That's not the end of it because you have a backup summary judgment motion down the road because you have about 644,000 possible objections that could be made to these claims if I add all this stuff up.

MR. BERNICK: I understand what you say. If we lose on summary judgment as to whether the boiler is there, will we have other backup defenses, and the answer is there are medical defenses. Some of the other defenses are not really backup defenses because you have to know what the boiler was and when it was put in place to make them. For example, the statute of

repose assumes that you can identify a boiler and know when it was finished, so that's a defense that can't be a backup defense. By contrast, the defense that says that there's a medical condition that has not been proven by reliable evidence, yes, that would be a second wave of defenses not focused on our conduct or on product identification, that are focused on the medicine, and the reason we put them second is because we believe they are going to be a little more difficult to deal with because they will require some expert testimony.

THE COURT: How long do you envision this process taking?

MR. BERNICK: I think this process is really almost purely a question of paperwork, with some limited discovery. I think the first wave of this process could be before Your Honor in a matter of months.

THE COURT: I'm talking about the total lifetime of this process.

MR. BERNICK: The total lifetime?

THE COURT: Getting it before me -- I'm not a claims adjustor. I was trained as a lawyer and as a judge, and if I get motions it takes me time to look at things. It's not going to be months for me to decide 200,000 discrete questions. I know that. It takes months to get your arms around the 200,000 that you even have in the Court.

MR. BERNICK: I think realistically what Your Honor

would get is a brief from us -- let's take the boilers as an example. We would take the 93,000 and we would file an omnibus objection and move for summary judgment, and we would attach to the motion for summary judgment affidavits of documentation of where our boilers were.

That is one of the most perverse issues, that somehow there's a big boiler there and nobody really knew about it except this person saw it. So we would submit that documentation. They would be entitled to conduct some discovery, obviously, to verify what the accuracy of that documentation is.

THE COURT: You would give them 30 days to do that?

MR. BERNICK: I would give them 30 days on the discovery, probably, yes. It's really relatively simple discovery. All it is is taking the depositions of the people who maintained the records and finding out what records they have. This is not rocket science. It's not that complex. We take the discovery, then --

THE COURT: You don't want to depose them? You don't want to depose the plaintiffs on that issue?

MR. BERNICK: Well, on the issue of what they saw, no. I think that, in fact, the claim form is probably enough for us to pose the issue; that is, that we would rest upon the reliability of our documentation in order to establish, in fact, the boiler was not there.

THE COURT: If the plaintiff came in and said, "I saw something different," you would be content not to cross-examine the plaintiff?

MR. BERNICK: It might be interesting to take a few depositions and develop some feel for the Court on what kind of testimony is offered, but we are not going to sit there and take 95,000 depositions.

THE COURT: Tell me how long this first 95,000 is going to take to dispose of.

MR. BERNICK: That, I think, could be done in three months. Again, because --

THE COURT: Who is doing what? Your part or my part?

MR. BERNICK: It depends on how fast you read the papers. Your Honor I think is justifiably and understandably -- I'll use the word I think it's --

THE COURT: Try awe-struck.

MR. BERNICK: Awe-struck, intimidated, disconcerted by the numbers, but the numbers are not what drive the equation. What's going to drive the equation is our ability to pick out common predicate facts that can be adjudicated, and it has to be a small number of common predicate facts. If we can't do that, it will take a very long time, and that's not our concept. Our concept is to pick out what counts and put it before Your Honor, what counts here. What counts here is the accuracy of our records in convincing you that there was a

is reasonable.

MR. BERNICK: There are two huge restrictions that absolutely foreclose those. It would be clearly erroneous. Restriction No. 1, the Fifth Circuit's decision in the Cimino case, you can't extrapolate and, therefore, deprive a litigant of a right to have an individual claim litigated and decided and their business is --

THE COURT: I think you want to totally undo the bankruptcy process, and I just don't agree with your interpretation of how that works, that you can't have an estimation process that considers past history of how claims were settled, to make an estimation that you have to have an individualized determination of every single claim.

MR. BERNICK: You have to have an individualized determination. Even when you extrapolate, all you are doing is considering only a certain aspect of the claim, is what it got settled for. You are still using all the individual data. You take a lot of individual data and are analyzing it statistically and making a projection. You can go ahead and do that, but it can't decide liability. When liability is disputed, you can't use estimation or extrapolation to resolve liability.

THE COURT: I'm just saying that it could determine the potential size of the universe for the purposes of voting. I think --